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Congress Makes Headway on Retirement Legislation

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Both the House and Senate have rolled out retirement plan legislative proposals that recycle many previous initiatives. With bipartisan approval in both chambers, hopes are high that 2019 will be the year for action. The proposals include coverage and nondiscrimination relief for closed defined benefit plans, enhancements for 401(k) plans, multiple employer pension plans, lifetime income disclosures for defined contribution plans, and more.

In the House — Ways and Means finishes mark-up

As an important step towards moving the legislation to a vote in the full House, the House Ways and Means Committee on Tuesday unanimously passed H.R. 1994, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) introduced by Rep. Richard Neal (D-Mass.). The bill, largely based on the Retirement Enhancement and Savings Act (RESA, H.R. 1007) that had advanced in prior years, incorporates elements from other savings, simplification, and small business proposals.

Among other changes, the legislation would include:

Relief for defined benefit plans that have been closed to new participants. In addition to coverage and nondiscrimination relief, it would address the minimum participation rule. The changes would be effective upon enactment, but employers could choose retroactive application to post 2013 plan years and could restart benefits of closed class participants that had been frozen to prevent noncompliance with the current rules.

New options for 401(k) plans. Safe harbor plans using automatic escalation could raise their cap from 10% to 15% of compensation. Safe harbor notices would be eliminated for plans using the nonelective contribution option, and employers could wait until 30 days before the end of the plan year to adopt the 3% nonelective safe harbor. They could also choose to add the nonelective safe harbor with an amendment by the end of the following year, but the amendment would need to provide 4% rather than 3% of compensation. Changes would apply to plan years beginning after 2019.

Deferrals for part time employees. Non-bargained 401(k) plans would be required to admit long-term part-time employees who have worked at least 500 hours in each of three consecutive years and attained age 21. These participants would be excluded from safe harbor contributions and coverage, nondiscrimination, and top-heavy requirements. This requirement would apply for plan years beginning after 2020 and would not count prior service.

Lifetime income disclosure. Annual account statements for defined contribution plans would have to include a representation of projected lifetime income based on the participant's account balance. Fiduciaries would not be responsible for results if they use assumptions and model disclosures that the DOL would provide within one year of enactment. Plans would have a year from that date to begin the disclosures. The proposal also includes a fiduciary safe harbor for annuity provider selection.

No credit card loans. The proposal would ban allowing access to plan funds through credit card loans. This would be effective for loans made after the date of enactment.

Age 72 is the new age 70½. To reflect mortality improvements, the minimum distribution required beginning date would increase to age 72 for individuals attaining age 70½ after 2019.

Open multiple employer plans. Participating employers in defined contribution multiple employer plans would be shielded from the "one bad apple" rule and would not need to have a "common interest" if the plan has a "pooled plan provider". The proposal would make this effective for plan years after 2020.

Stretch IRAs. IRAs and defined contribution plan balances would have a new ten-year distribution maximum for death benefits so that account holders are prevented from stretching out payments to beneficiaries over extended periods of time. (Non-designated beneficiaries would still be limited to five years.) The provision would not apply to defined benefit plans, so the typical ten and fifteen-year certain and continuous alternative distribution forms could remain in place. This provision is the main "pay-for" in the legislation and would be effective for deaths after 2019.

Penalty increases. The proposal would increase penalties for failing to timely file Form 5500, Form 8955-SSA and income tax withholding notices for forms and notices due after 2019.

In addition to the Ways and Means Committee, the bill has been referred to the Committee on Education and Labor.

In the Senate — RESA repeat

Senate Finance Committee Chairman Charles Grassley (R-Iowa) and ranking Democrat Ron Wyden (D-Ore.) introduced similar legislation — the Retirement Enhancement and Savings Act of 2019

(S. 972) — on April 1. The bill includes provisions for multiple employer plans, safe harbor 401(k) plans and closed defined benefit plans that generally mimic the provisions of the SECURE Act. It also includes proposed changes for magistrate judges of the U.S. Tax Court that are not in the House bill.

In closing

With bipartisan support in both the House and Senate, and with largely identical provisions throughout, chances of passage this year seem likely. Plan sponsors will want to monitor and identify the changes of interest for their employees.

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